

FILED  
U.S. DISTRICT COURT  
DISTRICT OF KANSAS

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

RAE L. GELCASH  
CLERK  
BY \_\_\_\_\_ DEPUTY  
AT KANSAS CITY, KS.

KANSAS NATURAL RESOURCE  
COUNCIL, INC., and SIERRA  
CLUB,

Plaintiffs,

v.

CAROL BROWNER CAROL M.  
BROWNER, Administrator,  
UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, DENNIS  
GRAMS, Regional  
Administrator, UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY REGION VII, and  
THE UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY

Defendants,

AND

THE STATE OF KANSAS,

Intervenor/Defendant.

CIVIL ACTION FILE NO.


95-2490-JWL

ORDER

UPON CONSIDERATION OF THE FOREGOING, the Court hereby finds  
that this Consent Decree is fair and reasonable, both  
procedurally and substantively, consistent with applicable law,

in good faith, and in the public interest. THE FOREGOING Consent Decree is hereby APPROVED.

SIGNED and ENTERED this 13th day of April 1998.

  
\_\_\_\_\_  
JOHN W. LUNGSTRUM  
Judge, U.S. District Court  
District of Kansas

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS

FILED  
U.S. DISTRICT COURT  
DISTRICT OF KANSAS

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RAULPH L. DELGACH  
CLERK  
BY *[Signature]*  
AT KANSAS CITY, KS.

KANSAS NATURAL RESOURCE  
COUNCIL, INC., and SIERRA  
CLUB,

Plaintiffs,

v.

CIVIL ACTION FILE NO.

95-2490-JWL

CAROL BROWNER CAROL M.  
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UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, DENNIS  
GRAMS, Regional  
Administrator, UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY REGION VII, and  
THE UNITED STATES  
ENVIRONMENTAL PROTECTION  
AGENCY

Defendants,

AND

THE STATE OF KANSAS,

Intervenor/Defendant.

CONSENT DECREE

WHEREAS, on November 1, 1995, Plaintiffs Kansas Natural Resource Council, Inc. ("KNRC") and the Sierra Club (collectively "Plaintiffs") filed a complaint (C.A. Number 95-2490 JWL) in this action ("Action") against Defendants Carol M. Browner, Administrator of the United States Environmental Protection

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Agency; Dennis Grams, Regional Administrator; the United States Environmental Protection Agency Region VII; and the United States Environmental Protection Agency (collectively "EPA") pursuant to Section 303(d) of the Clean Water Act, ("CWA") 33 U.S.C. § 1313(d), and the Administrative Procedure Act, 5 U.S.C. §§ 551, et. seq. ("APA");

WHEREAS, KNRC is a not-for-profit corporation organized under the laws of Kansas;

WHEREAS, KNRC is a citizens environmental organization, and most of its members are residents of Kansas;

WHEREAS, the Sierra Club is a national citizens environmental organization, and has numerous members who are residents of Kansas;

WHEREAS, the Sierra Club also has a Kansas Chapter that serves the interests of the members of the Sierra Club who are residents of Kansas;

WHEREAS, The Sierra Club and KNRC are advocacy organizations that have as a purpose the protection of the environment of the State of Kansas and the protection of the quality of the waters of Kansas;

WHEREAS, Section 303(d) of the CWA, 33 U.S.C. § 1313(d), and EPA's implementing regulations, 40 C.F.R. § 130.7(b)-(e), provide

for: (1) identification of waters for which applicable technology-based effluent limitations and other controls are not stringent enough to implement water quality standards (the "Section 303(d) list"); (2) establishment of a priority ranking for such waters; and (3) establishment of total maximum daily loads ("TMDLs") for pollutants for which those waters are not in attainment with water quality standards;

WHEREAS, the subject of this Action is to compel EPA to establish and Intervenor/Defendant the State of Kansas ("Kansas") to submit TMDLs for waters identified on the water quality limited segment ("WQLS") list submitted by Kansas pursuant to section 303(d) of the CWA, 33 U.S.C. § 1313(d), to EPA and to compel EPA to approve or disapprove Kansas' continuing planning process ("CPP") relative to section 303(e) of the CWA, 33 U.S.C. § 1313(e);

WHEREAS, Kansas has lead responsibility for the identification and prioritization of waters still requiring TMDLs and the establishment of TMDLs pursuant to CWA section 303(d), 33 U.S.C. § 1313(d);

WHEREAS, Plaintiffs, EPA and Kansas ("Party" or "Parties") have agreed to a settlement of this Action without any admission

of fact or law, which they consider to be a just, fair, and equitable resolution of the claims raised in this Action;

WHEREAS, by entering into this Consent Decree, the Parties do not waive or limit any claim or defense, on any grounds, related to any final agency action of EPA or Kansas taken pursuant to this Consent Decree, including EPA's approval, disapproval and/or establishment of Section 303(d) lists or TMDLs in Kansas, or to any inaction by Kansas or EPA;

WHEREAS, it is in the interest of the public, the parties and judicial economy to resolve the issues in this action without protracted litigation, including a trial; and

WHEREAS, the Court finds and determines that this Consent Decree represents a just, fair, and equitable resolution of the claims raised in this action.

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

#### GENERAL TERMS

1. The Parties to this Consent Decree are Plaintiffs, EPA and Kansas ("Party" or "Parties"). The Parties understand that (a) Carol Browner and Dennis Grams were sued in their official capacities as Administrator of EPA, and Regional Administrator of

EPA Region VII, respectively, and (b) the obligations arising under this Consent Decree are to be performed by EPA and Kansas. They are not to be performed by Carol Browner or Dennis Grams in their individual capacities.

2. This Consent Decree applies to, is binding upon, and inures to the benefit of the Parties, their officers, employees, members, successors, and assigns.

3. For the purposes of this Consent Decree, the following terms shall have the meaning provided below:

a. "EPA" means Carol M. Browner, the Administrator of EPA, or the Administrator's duly authorized representative; Dennis Grams, the Regional Administrator; the United States Environmental Protection Agency Region VII; and the United States Environmental Protection Agency;

b. The "United States" means the United States of America, including its officers, agencies, departments and instrumentalities;

c. "Water Quality Limited Segments" has the meaning provided at 40 C.F.R. § 130.2(j), or as hereafter amended;

d. "Total Maximum Daily Loads" has the meaning provided at 40 C.F.R. § 130.2(i), or as hereafter amended;

- e. "Water Quality Standards" has the meaning provided at 40 C.F.R. § 130.2(d), or as hereafter amended.
- f. "Watershed" means the drainage basin of a stream and its tributaries containing one or more of the WQLSSs requiring the establishment of a TMDL as determined by the state with respect to Paragraph 7, or the EPA with respect to Paragraph 8.

#### SUBMISSION OF TMDLS

4. The Parties agree to the schedule set forth in Attachment A ("Schedule"), the terms of which are incorporated by reference into this Consent Decree.

5. In fulfilling their obligations under this Consent Decree, Kansas is under no obligation to submit TMDLs to EPA nor is EPA under any obligation to establish TMDLs either (a) that are determined not to be needed consistent with Section 303(d) of the CWA and its implementing regulations, as either may be amended from time to time, including, but not limited to, 40 C.F.R. § 130.7(b)(1), or (b) for WQLSSs or pollutants that were on Kansas' 1996 section 303(d) list but, consistent with the provisions of the CWA and its implementing regulations, were removed from any subsequent Kansas section 303(d) list. If



Kansas removes a WQLS or pollutant from its 1996 section 303(d) list and such WQLS or pollutant is subsequently restored to the 303(d) list (1) by EPA and such restoration is upheld by Court order as a result of a separate judicial challenge, as allowed by Paragraph 12 of this Consent Decree, or (2) by Court order as a result of a separate judicial challenge, as allowed by Paragraph 12 of this Consent Decree, Kansas shall take TMDL action for such WQLS or pollutant by the later of either (a) the date set forth on the Schedule or (b) two years after such Court order. During the pendency of such judicial challenge, any subject WQLS or pollutant shall not be subject to the Schedule. If Kansas removes a WQLS or pollutant from its 1996 section 303(d) list, such WQLS or pollutant is subsequently restored to the 303(d) list by EPA, and such restoration is not subject to a separate judicial challenge, as allowed by Paragraph 12 of this Consent Decree, then EPA shall take TMDL action for such WQLS or pollutant by the later of either (a) the date set forth on the Schedule or (b) two years after the date the WQLS or pollutant is restored to the 303(d) list by EPA.

6. The Parties recognize that Kansas, as appropriate and consistent with the CWA and its implementing regulations, as either may be amended, may amend its section 303(d) list. In

developing subsequent lists, Kansas may, as appropriate, redefine — consistent with the CWA and its implementing regulations, as either may be amended — WQLSSs from the 1996 list. The Parties recognize that such redefinition shall not abrogate Kansas' obligation to establish TMDLs consistent with the CWA and its implementing regulations, as either the law or regulations may be amended.

7. By the dates set forth in the Schedule, Kansas shall either (a) establish and submit TMDLs pursuant to the Schedule to EPA for approval or disapproval; or (b) determine that such TMDLs are not necessary consistent with Paragraph 5 above. Any such TMDLs may be established on a watershed basis. Even if the TMDLs are prepared on a watershed basis, such TMDLs shall be established consistent with the CWA and its implementing regulations, as either the law or regulations may be amended. TMDLs may be established by any method consistent with the CWA and its implementing regulations, as either the law or regulations may be amended, including using a pollutant-by-pollutant or biomonitoring approach, or both, as determined by Kansas. When Kansas establishes a TMDL, the establishment of a TMDL means that the draft of the TMDL has been completed, there has been public notice and comment for the TMDL, there has been

consideration of the public comment, any necessary revisions to the TMDL have been made, and the TMDL has been submitted to EPA for approval or disapproval.

8. The Parties understand that Kansas has primary responsibility for the establishment of TMDLs; however, if Kansas fails to comply with its obligations under Paragraph 7, then EPA will take appropriate action necessary to (1) ensure completion of the TMDLs at issue either through establishment of TMDLs or approval of Kansas' submitted TMDLs; or (2) determine that TMDLs are not necessary consistent with Paragraph 5 above. EPA shall take the action required of it under (1) or (2) of this Paragraph 8 within one hundred and eighty (180) days after the dates set forth in the Schedule. Any such TMDLs may be established by EPA on a watershed basis. Even if the TMDLs are prepared on a watershed basis, such TMDLs shall be established consistent with the CWA and its implementing regulations, as either the law or regulations may be amended. TMDLs may be established by any method consistent with the CWA and its implementing regulations, as either the law or regulations may be amended, including using a pollutant-by-pollutant or biomonitoring approach, or both. When EPA establishes a TMDL, the establishment of a TMDL means that the draft of the TMDL has been completed, there has been

public notice and comment for the TMDL, there has been consideration of the public comment and any necessary revisions to the TMDL have been made and the TMDL has been transmitted to Kansas.

#### THE CONTINUING PLANNING PROCESS

9. By December 31, 1998, Kansas shall update and submit to EPA its CPP. The CPP may consist of an index incorporating applicable provisions from other documents by reference. EPA shall review the updated CPP within 90 days of receipt for the purpose of considering whether such CPP is consistent with CWA section 303(e), 33 U.S.C. § 1313(e), and EPA's implementing regulations at 40 C.F.R. 130.5, as either the law or regulations may be amended, and provide Kansas and Plaintiffs with a summary of its review of such updated CPP. Kansas may determine the format of its CPP as long as the minimum requirements of the foregoing statute and regulations are met and as long as Kansas includes in the CPP a description of that format.

#### REPORTING REQUIREMENTS

10. Beginning January 31, 1999, and by January 31 of each year thereafter that this Consent Decree is in effect, EPA and

Kansas shall provide Plaintiffs with a written report, jointly if possible, regarding the activities undertaken by EPA and Kansas to comply with this Consent Decree during the previous calendar year. The report shall include the following: (a) the WQLSs for which TMDLs have been established by Kansas or EPA for the year; (b) the TMDLs established by Kansas or EPA during that year; and (c) the WQLSs on the 1996 section 303(d) list that are not included on the then-current section 303(d) list and an explanation why they are not on the then-current list.

#### EFFECTIVE DATE

11. This Consent Decree shall become effective upon the date of its entry by the Court. If for any reason the District Court does not enter this Consent Decree, the obligations set forth in this Consent Decree are null and void.

#### REMEDY AND SCOPE OF JUDICIAL REVIEW

12. Nothing in the terms of this Consent Decree shall be construed to confer upon this Court jurisdiction to review any decision, either procedural or substantive, to be made by EPA or Kansas pursuant to this Consent Decree, except for an alleged failure to comply with any date or dates established by this

Consent Decree, including, but not limited to, the dates set forth in Paragraphs 7, 8, and 9 and the Schedule, and a determination that termination of the Consent Decree has occurred in accordance with Paragraph 17. The Parties agree that the remedy of contempt of court is not available to address (a) the merits of EPA's actual approval, disapproval, or establishment of section 303(d) lists or TMDLs under this Consent Decree, (b) the substance of EPA's review of Kansas' updated CPP referenced in Paragraph 9, (c) the merits of any section 303(d) lists or TMDLs that Kansas establishes and submits to EPA under this Consent Decree, or (d) the substance of Kansas' updated CPP referenced in Paragraph 9. The Parties further agree that the Plaintiffs' sole remedy for challenging the actions of EPA and/or Kansas in regard to (a) - (d) of this Paragraph 12, including but not limited to any Kansas or EPA establishment or approval of TMDLs on a watershed basis, is by a separate action otherwise allowed by law. EPA and Kansas reserve all their defenses to such separate action or actions. Nothing in this Consent Decree shall be construed as establishing that any party in such separate action or actions is a prevailing party. The terms of this Paragraph 12 shall not limit a Party's right to ask the Court for review or to make a determination under Paragraphs 17, 18, 19, 20, 21, and 24

for subject matter appropriate under such Paragraphs, and not enumerated in (a) - (d) of this Paragraph 12.

13. Nothing in this Consent Decree alters or affects the standards for judicial review of final Kansas or EPA action.

14. The Court only retains jurisdiction as necessary to resolve disputes arising under Paragraphs 17 (termination), 18 (recognized exceptions), 19 (dispute resolution), 20 (modifications), 21 (good cause) or 24 (costs). In addition, the Court may retain jurisdiction to issue other orders necessary and appropriate to require compliance with the Schedule.

#### RELEASE BY PLAINTIFFS

15. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a complete and final settlement of all claims which were asserted, or could have been asserted, by Plaintiffs against the United States and Kansas in this Action.

16. Plaintiffs hereby release, discharge, and covenant not to assert (by way of the commencement of an action, the joinder of the Administrator, EPA and/or Kansas or their officers, employees, members, successors, and assigns, as contemplated in Paragraph 2 above, in an existing action, or in any other

fashion) any and all claims, causes of action, suits or demands of any kind whatsoever in law or in equity which they may have had, or may now or hereafter have, against the United States and/or Kansas based upon matters which were asserted or could have been asserted by Plaintiffs in this Action.

#### TERMINATION OF CONSENT DECREE AND DISMISSAL OF CLAIMS

17. This Consent Decree and this Court's jurisdiction shall terminate after the Parties comply with the Schedule. Upon termination of this Consent Decree, this Action shall be dismissed with prejudice. EPA shall file the appropriate notice with the Court so that the Clerk of the Court may close the file.

#### RECOGNIZED EXCEPTIONS

18. The Parties recognize that the performance of this Consent Decree is subject to the statutes, legislative appropriations, and fiscal and procurement laws and regulations of Kansas and the United States, which include, but are not limited to, the Anti-Deficiency Act, 31 U.S.C. §§ 1341, et seq. The possibility exists that circumstances outside the reasonable control of Kansas and/or EPA could delay compliance with the timetables contained in this Consent Decree. Such situations



include, but are not limited to, a government shutdown such as occurred in 1995 and 1996 or catastrophic environmental events requiring immediate and/or time-consuming response by EPA and/or Kansas. Should a delay occur due to such circumstances, any resulting failure to meet the timetables set forth herein shall not constitute a failure to comply with the terms of this Consent Decree, and any deadlines occurring during or within one hundred twenty (120) days after the termination of the delay shall be extended one day for each day of the delay. EPA and Kansas will provide Plaintiffs with notice as soon as possible under the circumstances when they learn the facts upon which EPA and/or Kansas seeks to invoke the terms of the Consent Decree. EPA and Kansas will also provide Plaintiffs with reasonable notice of the termination of the event upon which EPA and/or Kansas invoked this term of the Consent Decree. In no event will the Parties be bound by this Consent Decree and the Schedule if Congress removes the requirement that Kansas submit and EPA approve or disapprove TMDLs, or if Congress establishes statutory deadlines for the submission or approval or disapproval of TMDLs that differ from those on the Schedule. Nothing in this Consent Decree precludes Plaintiffs from bringing a separate action otherwise allowed by law challenging Kansas' or EPA's failure to adhere to any new

Congressionally established deadlines. Any dispute regarding invocation of this provision shall be resolved in accordance with the dispute resolution provision of Paragraph 19 of this Consent Decree. If challenged, EPA and/or Kansas shall have the burden to demonstrate that this Paragraph 18 was appropriately invoked.

#### DISPUTE RESOLUTION

19. In the event of a disagreement between the Parties concerning the interpretation or performance of any aspect of this Consent Decree, the dissatisfied Party shall provide the other Parties with written notice of the dispute and a request for negotiations. The Parties shall meet and confer in order to attempt to resolve the dispute within 30 days of the written notice, or such time thereafter as is mutually agreed. If the Parties are unable to resolve the dispute within 60 days of such meeting, then any Party may petition the Court to resolve the dispute. The Parties may not avail themselves of this Paragraph 19 for those matters for which Plaintiffs' sole remedy under Paragraph 12 of this Consent Decree is to bring a separate action otherwise allowed by law.

### MODIFICATIONS

20. Modification of the dates set forth on the Schedule shall be by written consent of the Parties, or in accordance with the procedures specified below. If the parties agree in writing to a modification, the Consent Decree shall be deemed modified and the Court shall be so informed.

A. If EPA or Kansas files a motion requesting modification of a date or dates established by this Consent Decree totaling more than thirty (30) days and provides notice to the other Parties at least thirty (30) days prior to filing such motion, and files the motion at least sixty (60) days prior to the date for which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such automatic extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in such motion. EPA or Kansas may move the Court for a longer extension.

B. If EPA or Kansas files a motion requesting modification of a date or dates established by this Consent Decree totaling thirty (30) days or less, provides notice to the other Parties at least fifteen (15) days prior to the filing of such motion, and files the motion at least seven (7) days prior to the date for

which modification is sought, then the filing of such motion shall, upon request, automatically extend the date for which modification is sought. Such extension shall remain in effect until the earlier to occur of (i) a dispositive ruling by this Court on such motion, or (ii) the date sought in the modification.

C. If EPA or Kansas, in seeking a modification, fails to provide notice pursuant to Subparagraphs 20.A or 20.B above, that Party may move the Court for a stay of the date for which modification is sought. When seeking modification under this Subparagraph, EPA or Kansas shall give notice to the other Parties as soon as reasonably possible of its intent to seek a modification and/or stay of the date sought to be modified.

D. If the Court denies a motion by EPA or Kansas to modify a date established by this Consent Decree, then the date for performance for which modification had been requested shall be such date as the Court may specify.

E. Any motion to modify the Schedule shall be accompanied by a motion for expedited consideration. The Parties to this Consent Decree shall join in any such motion for expedited consideration.

21. Nothing in this Consent Decree, or in the Parties' agreement to its terms, shall be construed to limit the equitable powers of the Court to modify those terms, including but not limited to any date or dates established by this Consent Decree, upon a showing of good cause by any Party. Good cause includes, but is not limited to, changes in the law affecting EPA's or Kansas' commitments under this Consent Decree. Nothing in this Consent Decree precludes EPA or Kansas from presenting any particular kinds of evidence to the Court to demonstrate good cause, including but not limited to public comments about TMDLs proposed for Kansas' waters pursuant to either Paragraphs 7 or 8 above.

#### AGENCY DISCRETION

22. Except as expressly provided herein, nothing in this Consent Decree shall be construed to limit or modify the discretion accorded EPA or Kansas by law.

23. Nothing in this Consent Decree shall be construed to limit or modify EPA's or Kansas' discretion to alter, amend, or revise from time to time any actions EPA or Kansas may perform pursuant to this Consent Decree, or to amend or promulgate regulations consistent with the CWA.

### COSTS

24. EPA and Kansas agree that the Plaintiffs are the prevailing party on the issues resolved in Paragraphs 4 - 9 of this Consent Decree, are entitled to reasonable attorney's fees and costs, including expert witness fees, and shall be reimbursed according to the terms of a separate stipulated order.

### NOTICE

25. Any notice required or made with respect to this Consent Decree shall be in writing and shall be effective upon receipt. For any matter relating to this Consent Decree, the contact persons are:

#### For the Plaintiffs:

John Simpson  
Kansas Natural Resources Council, Inc.  
4937 Wyoming Street  
Kansas City, MO 64112

and

William J. Craven  
Sierra Club  
1414 K Street  
Suite 300  
Sacramento, CA 95814

For the United States:

Associate General Counsel, Water Division  
Office of General Counsel  
U.S. Environmental Protection Agency  
401 M Street, S.W.  
Washington, DC 20460

Rupert G. Thomas  
Office of the Regional Counsel, Region VII  
Environmental Protection Agency  
726 Minnesota Ave.  
Kansas City, KS 66101

and

Chief  
Environmental Defense Section  
Environment & Natural Resources Division  
United States Department of Justice  
950 Pennsylvania Ave, N.W.  
Washington, DC 20530-0001  
Attn: DJ # 90-5-1-4-375A

For Kansas:

Linda J. Fund  
Assistant Secretary General Counsel  
900 S.W. Jackson, Room 620  
Topeka, KS 66612

Upon written notice to the other Parties, any Party may designate  
a successor contact person for any matter relating to this  
Consent Decree.

#### REPRESENTATIVE AUTHORITY

26. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is fully authorized by the Party to enter into and execute the terms and conditions of this Consent Decree, and to legally bind such Party to this Consent Decree. By signature below, all Parties consent to entry of this Consent Decree.

#### MUTUAL DRAFTING

27. It is hereby expressly understood and agreed that this Consent Decree was jointly drafted by the Parties. Accordingly, the Parties hereby agree that any and all rules of construction to the effect that ambiguity is construed against the drafting Party shall be inapplicable in any dispute concerning the terms, meaning, or interpretation of this Consent Decree.

#### COUNTERPARTS

28. This Consent Decree may be executed in any number of counterpart originals, each of which shall be deemed to constitute an original agreement, and all of which shall constitute one agreement. The execution of one counterpart by



any Party shall have the same force and effect as if that Party had signed all other counterparts.

#### EFFECT OF CONSENT DECREE

29. This Consent Decree shall not constitute an admission or evidence of any fact, wrongdoing, misconduct, or liability on the part of Kansas, or the United States, its officers, or any person affiliated with it.

#### COMPLIANCE WITH OTHER LAWS

30. No provision of this Consent Decree shall be interpreted as or constitute a commitment or requirement that EPA or Kansas obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or take actions in contravention of the APA, 5 U.S.C. §§ 551-559, 701-706, the CWA, or any other law or regulation, either substantive or procedural.

#### APPLICABLE LAW

31. This Consent Decree shall be governed and construed under the laws of the United States.

THIRD-PARTY BENEFICIARIES

32. Nothing in this Consent Decree shall be construed to make any other person or entity not executing this Consent Decree a third-party beneficiary to this Consent Decree.

For the Defendants and the United States of America:

LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division  
U.S. Department of Justice  
Washington, D.C. 20530-0001

Dated: March 13, 1998

Melaine A. Williams  
MELANIE A. WILLIAMS  
Environmental Defense Section  
Environment and Natural Resources  
Division  
950 Pennsylvania Ave, N.W.  
Washington, DC 20530-0001

JACKIE N. WILLIAMS  
United States Attorney  
District of Kansas

Dated: APRIL 6, 1998

Christina L. Medeiros  
CHRISTINA L. MEDEIROS  
Assistant U.S. Attorney  
500 State Avenue, Suite 360  
Kansas City, Kansas 66101  
(913) 551-6730  
KS. S. Ct. # 12884

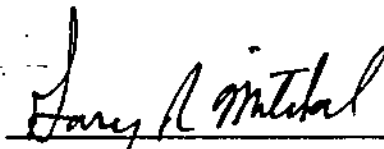
Of Counsel for the Defendants  
and the United States of America:

James H. Curtin  
Office of General Counsel  
U.S. Environmental Protection Agency  
401 M. Street, S.W.  
Washington, D.C. 20460

Rupert G. Thomas  
Office of the Regional Counsel,  
Region VII  
Environmental Protection Agency  
726 Minnesota Ave.  
Kansas City, KS 66101

For the Intervenor/Defendant State of Kansas:

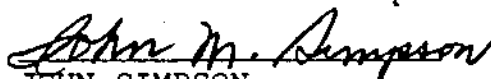
Dated: 3-20-98



GARY R. MITCHELL  
Secretary, Department of Health and  
Environment  
900 S.W. Jackson, Room 620  
Topeka, KS 66612

For Plaintiffs:

Dated: 03/19/98



JOHN SIMPSON  
Kansas Natural Resources Council,  
Inc.  
4937 Wyoming Street  
Kansas City, MO 64112

Dated:

4/3/98

William Craven

WILLIAM CRAVEN

Sierra Club

1414 K Street

Suite 300

Sacramento, CA 95814

## ATTACHMENT A

### I. SCHEDULE FOR TMDL ACTIONS BY THE STATE OF KANSAS

By June 30, 1999

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will submit TMDLs to EPA for approval or determine that TMDLs are not necessary ("take TMDL actions") for WQLSs in the Kansas/Lower Republican basin that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

By June 30, 2000

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in two of the following eleven basins that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list: Upper Arkansas, Lower Arkansas, Cimmaron, Upper Republican, Neosho, Missouri, Marais des Cygnes, Smoky Hill/Saline, Solomon, Walnut, and Verdigris basins ("the Eleven Basins Group").

By June 30, 2001

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in one additional basin in the Eleven Basins Group that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

By June 30, 2002

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in two additional basins in the Eleven Basins Group that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

By June 30, 2003

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in one additional basin in the Eleven Basins Group that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

By June 30, 2004

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in two additional basins in the Eleven Basins Group that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

By June 30, 2005

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in one additional basin in the Eleven Basins Group that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

By June 30, 2006

Subject to Paragraphs 5 and 7 of this Consent Decree, Kansas will take TMDL actions for WQLSs in two remaining basins in the Eleven Basins Group that are listed on both Kansas' 1996 section 303(d) list and the then-current section 303(d) list.

#### LAKES

Any TMDLs for lakes shall be submitted to EPA by Kansas at the same time as the TMDLs for the basin in which the lakes are located are submitted by Kansas.